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No. 390

IN THE

Supreme Court of the United States

October Term, 1955

JOHN SYRES, LOUIS J. WARRICK AND LOCAL 254, OIL WORKERS INTERNATIONAL UNION, C. I. O.,
Petitioners

v.

OIL WORKERS INTERNATIONAL UNION, LOCAL #23, F. A. McDUFFIE, CHAIRMAN, GULF MAIN PLANT GROUP AND GULF OIL CORPORATION, E. R. McADAMS, CHAIRMAN, GULF WORKMEN'S COMMITTEE,
Respondents

BRIEF ON BEHALF OF GULF OIL CORPORATION

In Opposition To Petition For A Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

The Respondent, Gulf Oil Corporation (hereinafter called Gulf), files this reply to the Petition for Writ of Certiorari.

Decisions Below

The trial court filed no opinion but dismissed the cause for the reason that the "cause of action, if any, . . . does

not arise under the Constitution, laws or treaties of the United States, within the purview and meaning of Title 28, U.S.C.A., Section 1331. (R. 19). The Court of Appeals, Fifth Circuit, affirmed in an opinion reported in 223 F. 2d 739, (CA-5, 1955), Judge Rives dissenting.

Jurisdiction

The only issues in the case go to the jurisdiction of the Court, both courts below having held that no jurisdiction exists in a Federal District Court under §1331, as alleged by petitioners.

Counter Statement of Questions Presented

1. Whether the alleged breach of a private agreement (to which agreement Gulf was not a party) between two unions becomes a federal question merely because the unions were certified under the National Labor Relations Act.[1]

2. Whether petitioners who are members of a certified bargaining union can seek equitable relief for an alleged wrong in a Federal District Court of limited jurisdiction without exhausting their administrative remedies under the National Labor Relations Act.

Counter Statement of the Case

The gravamen of the complaint is the alleged breach of an "amalgamation" agreement between two unions, Gulf not being a party to the alleged agreement. (R. 7, 8). The two local unions were separately organized but jointly certified as the collective bargaining agent of the employees. The two locals were amalgamated by voluntary action on

[1] 29 U.S.C. 151.

the part of the members of each union. The alleged breach of this "amalgamation" agreement forms the basis of the suit. (R. 12).

Diversity of citizenship is not alleged, nor are allegations made that the membership of Locals 23 and 254 is limited to members of the white and Negro races respectively. Pursuit of administrative remedies before the National Labor Board is not alleged, exhaustion of remedies within the union organization is not alleged, nor does petitioner allege that the amount in controversy *between individuals* is in excess of the jurisdictional amount of $3,000.00.

Argument

I.

The Breach of A Private Agreement Does Not Require Construction of A Federal Statute.

Both courts below correctly hold that jurisdiction was not affirmatively shown. An *affirmative* showing of jurisdiction is mandatory under long established rules of this Court.[2]

Petitioners, in attempting to justify issuance of certiorari, fail to meet this issue squarely but attempt to show a conflict between the decisions of this Court in *Steele*[3] and *Tunstall*[4] and the opinion rendered by the majority in the Court of Appeals. Clearly, no conflict exists. The Fifth Circuit recognizes, in appropriate cases, the doctrine of *Steele* and *Tunstall*.[5] Here, it follows the *Williams*[6] case and care-

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[2] Norton v. Larney, 266 U.S. 511, 515 (1925).

[3] Steele v. Louisville & N.R. Co., 323 U.S. 192 (1944).

[4] Tunstall v. Brotherhood, etc., 323 U.S. 210 (1944).

[5] Pellicer v. Brotherhood of Railway and Steamship Clerks, 118 F. Supp. 254 (1953), Aff. 217 F. 2d 205 (CA-5, 1954), cert. den. 349 U.S. 912 (1955).

[6] Williams v. Yellow Cab Co., 200 F. 2d 302 (CA-3, 1952); cert. den. sub. nom. Dargan v. Yellow Cab Co., 346 U.S. 840 (1953).

fully distinguishes *Steele* and *Tunstall*. This court denied a writ in the *Williams* case where the identical argument was invoked by petitioner as is urged herein.

In the instant case the Court of Appeals went to the heart of the matter and found that the alleged wrongdoing arose from a breach of a private agreement between two unions on a simple seniority problem and correctly decided the jurisdictional issue. Holding that petitioners' remedies are clear and adequate in the state courts of general jurisdiction in Texas, the court below wisely refused to assume the burden of policing collective bargaining agreements.

To permit individual members or dissatisfied minorities to go into the Federal Courts on every seniority clause in contracts would place an intolerable burden upon these courts. Each Federal Judge would then be required to review and pass upon seniority clauses which contain "variations acceptable in the discretion of the bargaining representatives . . ."[7]

The Court of Appeals correctly recognized the absence of a conflict between the instant case and the *Steele* and *Tunstall* cases because there the petitioners could not become members of the bargaining union and were denied *any* administrative remedies.[8] Here, *petitioners are members of the bargaining union* and the National Labor Relations Board stands ready to protect their legal and constitutional rights.

In the complaint, petitioners alleged that Local No. 254 "after receiving the assurance of the membership of Local 23 that they would in no manner be discriminated against in the negotiation of the Collective Agreement . . . (with Gulf)

[7] Ford Motor Co. v. Huffman, 345 U.S. 330 (1952).
[8] Tunstall, supra.

. . . because of race or color . . . allowed the Workmen's Committee to be formed by the joint action of Local 23 and Local 254 . . ." [9] Upon this allegation, the majority in the Court of Appeals properly held:

> "In the present case all employees were members of the 'amalgamated' union by their own voluntary consent, and their complaint is not that they were not represented, but that the committee selected for the purpose of making the contract had violated the provisions of an agreement, . . . In this situation, the alleged wrong-doing arose from a breach of that contract, which, if proven, would require a reformation or cancellation to comply with the understanding alleged through establishment of a single line of seniority for promotion. It does not require an interpretation of the National Labor Relations Act or any other federal law, and hence all parties on either side must be citizens of different states."

There is a close similarity between the case at bar and *Hayes v. Union P. R. Co.*,[10] wherein jurisdiction was denied in a case arising under the Railway Labor Act.[11] There the trial court said:

> " . . . Any right of action, if one exists, is based on the alleged breach of the agreement and does not arise under the Railway Labor Act, but only from the consequent contractual relations of the parties . . ." [12]

The Court of Appeals, Ninth Circuit, adopted this opinion with the significant comment "that the Federal Courts

[9] Complaint, Par. VII, R. 7-8.

[10] Hayes v. Union P.R. Co., 88 F. Supp. 108 (D.C.N.D. Cal. 1950); 184 F. 2d 337 (CA-9, 1950); cert. den. 340 U.S. 942 (1950).

[11] 45 U.S.C. 151, et seq.

[12] 88 F. Supp. 108, 111, per Roche, Ch. J.

are not charged by federal law with the duty or function of policing the parties in the performance of collective bargaining agreements entered into pursuant to the Railway Labor Act . . . " *Hayes* pitched his entire case upon the doctrine of *Steele* and *Tunstall*. Nevertheless, this court denied the writ of certiorari.

Indeed, it would be an unusual ruling which would require Federal Courts to assume the duty of adjudicating all controversies arising out of contracts negotiated by collective bargaining solely because the bargaining was done under some federal law. Suffice it to say, no such ruling has yet been made.

This court has denied federal jurisdiction under §301 of the Labor Management Relations Act in the *Westinghouse* case.[13] It held, and properly so, that:

> "The employees have always been able to enforce their individual rights in the state courts . . ." [14]

Texas has given recognition of these rights of individual employees, even as against their own union.[15]

II.

Administrative Remedies Under the National Labor Relations Act Must Be Exhausted

Under the National Labor Relations Act, the Board has consistently recognized its duty to police the activities of certified unions to prevent discrimination because of color

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[13] Association of Westinghouse Emp. v. Westinghouse E. Co., No. 51, 1955, 75 S. Ct. 488.

[14] **Id.** 75 S. Ct. 488, 500.

[15] Lundine v. McKinney, 183 S.W. 2d 265 (Tex. Civ. App. 1944, no writ).

or race.[16] Such power is consistent with the duty cast upon the Board by the law creating it.

On the other hand, under the Railway Labor Act, there is no administrative remedy available.[17] Thus, the true distinction between cases arising under the two Acts becomes apparent. With the Railway Labor Board powerless to protect Negro employees, who were denied membership in the union having exclusive bargaining rights, this Court properly permitted *Steele* and *Tunstall* to invoke the Court's jurisdiction.

The Ninth Circuit, as late as August 26, 1955, upheld a Labor Board order finding both the company and the union guilty of unfair labor practices because of a discriminatory seniority provision in the contract.[18] The Board [19] had found the company and the union guilty of violating the Labor Management Relations Act. True, the issue was different from that raised here, but the result reached is in harmony with the jurisdiction previously asserted by the Board in *Larus, Hughes,* et al., supra. The remedy was the usual one of cease and desist and make whole for loss of earnings. This is a far cry from that of "economic suicide" as decertification was termed by *amicus curiae* in the Court of Appeals.[20]

Actually, "the particular means by which the effects of unfair labor practices are to be expunged are matters 'for

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[16] Carter Mfg. Co., 59 NLRB 804 (1944); Larus & Bro. Co., 62 NLRB 1075 (1945); Veneer Products, Inc., 81 NLRB 492 (1949); The Coleman Co., 101 NLRB 120 (1952) Hughes Tool Co., 104 NLRB 318 (1953).

[17] Tunstall, supra.

[18] NLRB v. I.B.T., etc. (CA-9, August 26, 1955), not yet reported; 36 LRRM 2832.

[19] Pacific Inter. Express, 107 NLRB 837, 844 (1954).

[20] Brief of Amicus Curiae.

the Board not the courts to determine.' " [21] Indeed, in reviewing orders of the Board, the courts must recognize the function "of the Labor Board as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect." [22]

The jurisdiction sought here by petitioners without resorting to the Board for redress of alleged grievances "would indeed open a Pandora's Box and the resulting evils and inconveniences would perhaps lead to unsatisfactory conditions reminiscent of those existing prior to the Portal-to-Portal Act of 1947 . . ." [23]

Conclusion

The lower courts having ruled correctly upon the jurisdictional issue, the respondent Gulf respectfully prays that the petition be denied.

Respectfully submitted,

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[21] Virginia Electric & P. Co. v. NLRB, 319 U.S. 533, 539 (1942), quoting from I.A.M. v. NLRB, 311 U.S. 72, 82 (1940).

[22] Universal Camera Corp. v. NLRB, 340 U.S. 474, 488 (1950).

[23] Rock Drilling Co., etc. v. Mason & Hanger Co., 217 F. 2d 687, 692 (CA-2, 1954), cert. den. 349 U.S. 915 (1955).

Certificate of Service

Copies of the foregoing reply have been furnished to counsel of record for all parties.

Attorneys for Respondent